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UNITED STATES BANKRUPTCY COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re

VINEYARD NATIONAL BANCORP,

Debtor.

Bk. No. 6:09-bk-26401-RN

Chapter 11

REPLY TO OBJECTIONS OF UNITED STATES TRUSTEE AND FEDERAL DEPOSIT INSURANCE COMPANY TO DISCLOSURE STATEMENT IN SUPPORT OF THE DEBTOR'S JOINT PLAN OF LIQUIDATION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS.

Date: February 2, 2010
Time: 2:00 p.m.
Place: Courtroom 301
3420 Twelfth Street
Riverside, CA 92501-3819

Vineyard National Bancorp, Debtor and debtor in possession ("VNB" or "Debtor") in the captioned case ("Bankruptcy Case") under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* ("Bankruptcy Code"), and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case ("Committee" and, with the Debtor, the "Co-Proponents"), as co-proponents of the *Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors, Dated as of January 6, 2010* ("Joint Plan") do hereby file this *Reply To Objections of United States Trustee and Federal Deposit Insurance Company to Disclosure Statement in Support of The Debtor's Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors* ("Reply"), and represent as follows:

I.

REPLY TO UNITED STATES TRUSTEE'S OBJECTIONS.

It appears from the Docket in the Debtor's case that the United States Trustee ("UST") initially attempted to file its *United States Trustee's Objections to Disclosure Statement in Support of the Debtor's Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors; Declaration of Elizabeth A. Lossing* ("UST Objection") on January 5, 2010. (Docket No. 88). However, the only document actually placed on the docket at that time was a proof of service for the UST Objection. *Id.* The UST Objection itself was later filed on January 8, 2010 (Docket No. 93).

The principal thrust of the UST Objection was to request a continuance of the hearing to consider the disclosure statement in support of the Joint Plan, based on the fact that Exhibits B and C to the disclosure statement had not then been filed, and the UST argued that more time was needed for creditors to consider the missing information before the hearing, which was then set for January 21, 2010. Concurrently with the UST's first filing on January 5, 2010, the Debtor filed its *Notice of Supplemental Filing of (1) Exhibits B, C and E to Disclosure Statement in Support of the Debtor's Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors* ("Supplement") (Docket No. 89). The Supplement contained Exhibits B, C and E to the disclosure statement, as well as redlined pages showing changes to the text of the disclosure statement and Plan that were then on file. On January 6, 2010, the Debtor further filed its *Notice of Errata Regarding*

Notice of Supplemental Filing of (1) Exhibits B, C and E to Disclosure Statement in Support of the Debtor's Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors (Docket No. 90) ("Notice of Errata"), relating to a copy of the proposed Liquidating Trust Agreement (Exhibit E to the Disclosure Statement) that had been inadvertently omitted from the Supplement. On the same day, the Debtor filed the *Disclosure Statement in Support of the Debtor's Joint Plan of Liquidation of the Debtor and the Official Committee of Unsecured Creditors, Dated as of January 6, 2010* (Docket No. 91) ("Disclosure Statement") incorporating all of the changes set forth in the Supplement and the Notice of Errata.

Although the UST Objection was actually filed two days later, on January 8, 2010, it appears to have been drafted as of the date of the earlier UST filing on January 5, 2010, and thus does not take into account the supplemental filings of the Debtor described above. The Co-Proponents believe that the bulk of the UST's objections have been resolved as a result of those filings. Furthermore, at the request of the Court, the hearing to consider the Debtor's *Notice of Motion and Motion for Order Authorizing and Approving (A) the Adequacy of the First Amended Disclosure Statement in Support of the Debtor's Plan of Liquidation, (B)the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices With Respect Thereto; and (C) Related Confirmation Procedures, Deadlines and Notices; Memorandum of Points and Authorities* (Docket No. 80) ("Motion to Approve Disclosure Statement") was thereafter continued from January 21, 2010 to February 2, 2010. The Co-Proponents submit that this continuance should obviate the UST's request, in the UST Objection, that the hearing be continued.

In addition to the objections addressed above, the UST Objection contains certain specific textual objections. *See* UST Objection, Section 3, "Other Issues." These will each be addressed below.

UST Objection (a): "On page 13, a reference to footnote 5 appears on line 1. There is no footnote 5 at the bottom of the page."

Co-Proponents' Response: This has been rectified in the Disclosure Statement.

UST Objection (b): "The definition of Brokered Deposits has not been offered. It would assist in understanding the liquidity stabilization discussed on Page 23, line 14, if the term was appropriately defined.

Co-Proponents' Response: The discussion of Brokered Deposits relates solely to pre-petition events, which appear to have limited impact on the Joint Plan, which is a plan of liquidation. Nonetheless, the Co-Proponents will include the following description of Brokered Deposits in a footnote following the first use of the Term in the Disclosure Statement:

> The term "Brokered Deposits" includes those deposits where an intermediary facilitates the placement of deposits with an institution and, in the case of an institution which is under a regulatory order, deposit products offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area. *See* Section 337.6(b) of the FDIC's Rules and Regulations.

UST Objection (c): "The cost reductions are identified commencing on page 23. These reductions are not quantified. It would be helpful to know the funds that are now available for creditors as a result of the cost saving measures."

Co-Proponents' Response: As an initial matter, the Co-Proponents believe that the supplemental filings described above now make plain the funds now available to creditors. In addition, it bears noting that, once again, these measures were taken before the commencement of the Debtor's Bankruptcy Case. Thus, while certainly relevant as background, they do not have a direct impact on the Debtor's Bankruptcy Case and liquidating plan. As a practical matter, however, the financial and other records that would allow the Debtor to quantify the savings in the manner requested by the UST were seized by the FDIC as Receiver for the Bank, and accordingly are not available to the Debtor.

UST Objection (d): "The Debtor discusses its Motion to Wind Down Employee Stock Ownership Plan, commencing on page 29. The cost to the estate, if any, is not discussed or disclosed.

Co-Proponents' Response: In December, 2009, the Court requested that a renewed and amended motion seeking authority to wind down the ESOP be brought, which would, *inter alia,* eliminate the Debtor's request for a release of the ESOP Trustees and provide evidence that the winding down of the ESOP would not occasion additional liability to the Debtor's estate. On January 13, 2010, subsequent to the supplemental filings to the Disclosure Statement and Joint Plan described above, the Debtor filed its *Notice of Motion and Renewed and Amended Motion Pursuant to Sections 105 and 363(b) of the Bankruptcy Code for Entry of an Order (1) Approving the Use of Certain Estate Funds to Terminate the Debtor's Employee Stock Ownership Plan, (2) Authorizing Debtor to Forgive, Discharge and Cancel the Promissory Note Executed by the Employee Stock Ownership Plan Trust, and (3) Granting Such Other and Further Related Relief; Memorandum of Points and Authorities in Support Thereof; and Declarations of Donald H. Pelgrim and John J. Heber in Support Thereof* ("Amended ESOP Motion") pursuant to Rule 9013-1(o)(1) of the Local Bankruptcy Rules of this Court ("Local Rules") (Docket No. 101). The Amended ESOP included expert evidence that the winding down of the ESOP would not result in any additional liability being incurred by the Debtor's estate.

To reflect this, the Co-Proponents will replace the discussion of the ESOP Motion contained in the Disclosure Statement in its entirety, with the following:

3. Motion to Wind-Down Employee Stock Ownership Plan.

The Debtor was the plan sponsor of an Employee Stock Ownership Plan ("ESOP") for employees of both the Debtor and the Bank and the Debtor's Board administered the ESOP ("ESOP Committee") with the aid of the ESOP trustee, First Bankers Trust Services, Inc. ("FBTS" or "Trustee"). All of the ESOP assets were held in a segregated trust fund for the benefit of the ESOP participants (the "ESOP Trust").

As a means to fund the ESOP Trust's purchase of 298,000 shares of common stock in the Debtor ("Shares") for allocation to employee participant accounts, the ESOP Trust entered into a loan agreement on behalf of the ESOP with TIB The Independent Bankers Bank (the "TIB Loan"). On or about December 10, 2004, the ESOP Trust entered into a Loan Agreement with the Debtor to borrow approximately $6,855,638.46 from the Debtor (the "ESOP Loan") pursuant to a Promissory Note to repay the TIB Loan in full. The ESOP Loan was secured by the Shares and such Shares were placed in a suspense account maintained by the ESOP Trust for the benefit of the Debtor.

On September 8, 2009, the Debtor filed its *Notice of Motion and Motion Pursuant to Sections 105 and 363(B) of the Bankruptcy Code for Entry of an Order (1) Approving the Use of Certain Estate Funds to Terminate the Debtors Employee Stock Ownership Plan, (2) Authorizing Debtor to Forgive, Discharge and Cancel the Promissory Note Executed by the Employee Stock Ownership Plan Trust, and (3) Granting Such Other and Further Related Relief; Memorandum of Points and Authorities in Support Thereof; and Declaration of Donald H. Pelgrim in Support Thereof* ("ESOP Motion") (Docket No. 40), seeking an order of the Court authorizing the Debtor to take certain steps to terminate its Employee Stock Ownership Plan ("ESOP"), which had become defunct as a result of the Bank being placed into FDIC receivership. The ESOP Motion was unopposed, and on September 29, 2009, the Debtor filed a *Declaration of Non-Opposition* and related documents (Docket No. 55) seeking entry of an order granting the motion.

In December, 2009, the Court requested that a renewed and amended motion seeking authority to wind down the ESOP be brought, which would, inter alia, eliminate the Debtor's request for a release of the ESOP Trustees and provide evidence that the winding down of the ESOP would not occasion additional liability to the Debtor's estate. On January 13, 2010, the Debtor filed its *Notice of Motion and Renewed and Amended Motion Pursuant to Sections 105 and 363(b) of the*

Bankruptcy Code for Entry of an Order (1) Approving the Use of Certain Estate Funds to Terminate the Debtor's Employee Stock Ownership Plan, (2) Authorizing Debtor to Forgive, Discharge and Cancel the Promissory Note Executed by the Employee Stock Ownership Plan Trust, and (3) Granting Such Other and Further Related Relief; Memorandum of Points and Authorities in Support Thereof; and Declarations of Donald H. Pelgrim and John J. Heber in Support Thereof ("Amended ESOP Motion") pursuant to Rule 9013-1(o)(1) of the Local Bankruptcy Rules of this Court ("Local Rules") (Docket No. 101).

As of the Petition Date, and as reflected on Schedule B of the Debtor's Schedules of Assets and Liabilities, the balance of the ESOP Loan was $4,528,187. Of the original 298,000 Shares held in the suspense account by the ESOP Trust as collateral for the ESOP Loan, only approximately 202,996 Shares remained as collateral in the suspense account as property of the Debtor's estate on the Petition Date, and such Shares have been liquidated to preserve value for the Debtor's estate. The net sale proceeds from the sale of the 202,996 Shares was approximately $5,650.11 (the "Debtor Suspense Account Cash"). By the ESOP Motion, the Debtor sought court approval to use the Debtor Suspense Account Cash to partially fund the wind-down and termination of the ESOP and to cancel, forgive and discharge the ESOP Loan since the ESOP Loan would not be re-paid.

Upon Court approval of the Amended ESOP Motion, the ESOP Committee will work together with the Trustee of the ESOP Trust to handle the wind-down and termination of the ESOP and to distribute the ESOP Trust assets. The administrative expenses arising from such efforts are estimated to total approximately$21,301.28.

The ESOP provides that the Debtor and Bank shall pay such administrative expenses and if they fail to do so, the Trustee shall pay such expenses out of the ESOP Trust. The Bank cannot repay any expenses considering it is in FDIC receivership and its assets have been sold to CB&T. Accordingly, upon entry of an

order approving this Amended Motion, the Debtor intends to cover expenses of the wind-down and termination with cash from the ESOP Trust. After all expenses associated with the wind-down and termination of the ESOP are paid, the Debtor estimates that a balance of approximately $30,709.40 will remain in the ESOP Trust, which funds are owned by the ESOP Trust, not the Debtor's estate. That balance shall be distributed to the ESOP Trust beneficiaries as soon as reasonably practicable.

UST Objection (e): "The Debtor reveals on page 33 that tax refunds that are the result of an audit may be owed to the FDIC. There is no discussion for the FDIC's basis for claiming the refund."

Co-Proponents' Response: The Co-Proponents will modify the first paragraph of the discussion of the "Tax Audit and Refunds" section of the Disclosure Statement as follows:

In connection with an audit of the Debtor's federal income tax returns for the 2008 tax year conducted by the Internal Revenue Service ("IRS"), it has come to the Debtor's attention that it may be eligible to use a change in the tax law promulgated under Revenue Procedure 2009-52 permitting companies to carry back Net Operating Losses ("NOL") and Alternative Minimum Tax Net Operating Losses ("ATNOL") incurred in either the 2008 or 2009 tax years for a period of 5 years versus the 2 year period under the old rule. As the Debtor has previously received a refund in connection with its 2008 federal income tax returns based on an NOL carry back to the 2007 and 2006 tax years under the old rule, if the 2008 tax year is elected under the new rule the Debtor would be able to seek an additional refund related to losses incurred in 2008 by carrying them back to the 2005, 2004 and 2003 tax years. Based on preliminary estimates the amount of the additional refund attributable to a carry back of the 2008 NOL to those tax years is approximately $21,800,000.

The amount of such refund is not certain and some or all of the refund may

be claimed by the FDIC as Receiver for the Bank. The FDIC's basis for alleging a claim to the refund may include its assumption of certain rights and obligations as the Receiver for Vineyard Bank, including the right to receive any tax refunds allocable to Vineyard Bank. Pursuant to regulatory requirements, Vineyard Bank and the Debtor entered into a Tax Sharing Agreement. The Debtor and the Committee contend that pursuant to the Tax Sharing Agreement and applicable law, the Debtor owns all, or at least a portion, of any tax refunds. Further, that if the Debtor is found to be the owner of any tax refund the FDIC may have a prepetition unsecured claim against the Debtor for its allocable share of such tax refunds. The FDIC, however, contends that it, rather than the Debtor, owns such tax refunds.

There can be no guaranty that any refund will be allowed by the IRS in full or in part, or that the Debtor, as opposed to the FDIC as Receiver for the Bank, will receive any, or any material portion of, any such refund.

UST Objection (f): "Page 39, lines 7 through 22 discuss the treatment of Class 3 Claims. The total claims and estimated payment is not disclosed.

Co-Proponents' Response: This information was provided in the Supplement. *See* Disclosure Statement Page 39, lines 14 – 21.

II.

REPLY TO OBJECTION OF THE FDIC.

On or around January 6, 2010, counsel for the Debtor was contacted by counsel for the Federal Deposit Insurance Corporation ("FDIC"). During the course of the Debtor's Bankruptcy Case, the Debtor's current management has generally enjoyed a co-operative relationship with the FDIC. Counsel for the FDIC requested that the Debtor agree to enter into an agreement formalizing this co-operation with respect to the Debtor's and the FDIC's dealings with the Internal Revenue Service on tax issues, and particularly, in pursuing a substantial refund that the Debtor believes is owed. Negotiations on the terms of such an agreement commenced, and the Debtor agreed to an

extension of the time in which the FDIC could object to the Disclosure Statement to facilitate those negotiations.

As previously noted, shortly thereafter the Debtor and the Committee agreed, at the request of the Court, to continue the January 21, 2010 hearing to February 2, 2010. On or about January 8, 2010, the Debtor provided comments to a proposed form of co-operation agreement with the FDIC to the FDIC's counsel. Based on the representation of the FDIC's counsel, that draft of the agreement remains under review by the FDIC. On January 20, 2010, the FDIC filed its objection to the Disclosure Statement (Docket No. 110) ("FDIC's Objection"), seeking inclusion in the Disclosure Statement of a description of the allegations and claims contained in the FDIC's proof of unliquidated claim, which was filed herein on January 15, 2010 ("FDIC POC").

The Co-Proponents note that the FDIC POC was filed subsequent to the Supplement and Notice of Errata. Since it has been filed, the Co-Proponents do not object to noting that fact in the Disclosure Statement and including a copy of the FDIC POC as an Exhibit to the Disclosure Statement. Accordingly, the Co-Proponents propose inserting the following language as new Section III D 9 of the Disclosure Statement:

3. FDIC Proof Of Claim.

On January 15, 2010, the FDIC filed its Proof of Claim in the Debtor's Bankruptcy Case ("FDIC POC"). As filed, the FDIC POC is for an unliquidated amount and alleges both unsecured and priority claims. A copy of the FDIC POC is attached hereto as Exhibit "H."

III.

CONCLUSION.

The Co-Proponents respectfully submit that, as modified as proposed herein, the Disclosure Statement satisfies the requirements for approval under 11 U.S.C. § 1125. Accordingly, the Co-Proponents request that the Court enter its order approving the Disclosure Statement as modified, granting such other relief as is requested in the Debtor's Motion to Approve Disclosure Statement, and such other and further relief as the Court may deem appropriate under the circumstances.

Dated: January 26, 2010

LANDAU GOTTFRIED & BERGER LLP
JON L.R. DALBERG
RODGER M. LANDAU

By: _____
Jon L.R. Dalberg
Counsel for Vineyard National Bancorp

In re: VINEYARD NATIONAL BANCORP, Debtor.	CHAPTER 11 CASE NUMBER 09-26401-RN

PROOF OF SERVICE OF DOCUMENT

I, Natalie M. Cereseto, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: Landau Gottfried & Berger LLP, 1801 Century Park East, Suite 1460, Los Angeles, CA 90067.

A true and correct copy of the foregoing document described: **REPLY TO OBJECTIONS OF UNITED STATES TRUSTEE AND FEDERAL DEPOSIT INSURANCE COMPANY TO DISCLOSURE STATEMENT IN SUPPORT OF THE DEBTOR'S JOINT PLAN OF LIQUIDATION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On January 26, 2010, I checked the CM/ECF docket for this bankruptcy case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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☐ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served)**:**
On January 26, 2010, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

BY U.S. MAIL
Honorable Richard M. Neiter
U.S. Bankruptcy Court
255 East Temple Street, Suite 1652
Los Angeles, CA 90012

☒ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on_____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

January 26, 2010	Natalie M. Cereseto	NMCereseto
Date	*Type Name*	*Signature*

In re: VINEYARD NATIONAL BANCORP, Debtor.	CHAPTER 11 CASE NUMBER 09-26401-RN

Additional Service Information (if needed):

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